

STATE OF NORTH CAROLINA
COUNTY OF PITT

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 EHR 07715

DEMETRIUS SMITH,
Petitioner,

v.

NORTH CAROLINA DEPARTMENT OF
ENVIRONMENTAL QUALITY, DIVISION
OF WASTE MANAGEMENT,
Respondent.

SETTLEMENT AGREEMENT

Petitioner Demetrius Smith (hereafter "Petitioner") and Respondent North Carolina Department of Environmental Quality, Division of Waste Management (hereafter "the Division" or "DWM"), hereby enter into this Settlement Agreement in order to resolve matters in controversy between them raised in this Settlement Agreement.

The parties hereby stipulate:

A. In the document constituting the contested agency action in this matter, Petitioner was assessed by the Division on September 29, 2015, a civil penalty in the total amount of \$9,196.75, which is comprised of the following: (1) a civil penalty in the amount of \$2,000.00 for violation of 15A NCAC 2N .0302 and .0402 from October 10, 2014 through at least September 29, 2015 by failing to meet corrosion protection requirements for four UST systems; (2) a civil penalty in the amount of \$4,700.00 for violation of 15A NCAC 2N .0304 from October 10, 2014 through at least September 29, 2015 by failing to provide secondary containment for four UST systems located between 100 and 500 feet of a well serving a public water system, (3) a civil penalty in the amount of \$2,000.00 for violation of 15A NCAC 2N

.0801 from October 10, 2014 through at least September 29, 2015 by failing to maintain and secure four UST systems that have been temporarily closed, in accordance with the procedures and requirements of the cited rules; and (4) investigative costs in the amount of \$496.75.

B. The UST systems at issue were located at the present or former Smith Convenience Store (Facility ID# 00-0-0000031363), located at 560 Briley Road/S.R. 1415, Greenville, Pitt County, North Carolina 27834 (hereafter the "Site"). The UST Section Enforcement Case Number concerning this matter is UST 15-071P.

C. The UST systems at the site were registered by Seymore Smith on May 22, 1989. The registration form listed "Smith Convenience Store" as the owner of the UST systems. Petitioner was not and is not a partner in or owner of any entity by the name of "Smith Convenience Store." By letter dated June 19, 2002, Respondent notified Smith Convenience Store that a corrected UST-15A "Ownership of UST System(s)" form needed to be filed, and that said form "must be completed by either an individual or a corporation that owns the UST systems at this facility, whichever applies." The notice further stated that "the UST Section will not issue a UST operating permit for this facility until a valid UST-15A is received." Neither Seymore Smith nor Smith Convenience Store filed a corrected UST-15A in response to said notice. Seymore Smith died intestate on November 25, 2002. Respondent has issued no UST operating permit for the UST systems at issue since prior to Seymore Smith's death. At the time of Seymore Smith's death, the UST systems were not in operation.

D. On October 26, 2015, Petitioner filed a Petition for Contested Case Hearing with the Office of Administrative Hearings, Pitt County, 15 EHR 07715.

Without any hearing of fact or law in the above-styled matter and in order to avoid the cost and delay of further litigation, Petitioner Demetrius Smith and Respondent DWM agree that:

1. Subject to the Paragraphs below, Respondent agrees to reduce the penalty to Zero and NO/100 Dollars (\$0.00).

2. In exchange for the Respondent reducing the penalty to Zero, Petitioner will cause to be filed with the Office of Administrative Hearings a Notice of Withdrawal of his contested case, which bears the caption at the top of this agreement, within fourteen (14) days of the execution of this agreement.

3. Petitioner denies liability or responsibility for the matters described in the NOV, and/or the Civil Penalty. By entering into this Settlement Agreement, Petitioner does not admit any allegations contained in the NOV, and/or the Civil Penalty. By entering into this Settlement Agreement, the Division and DWM do not waive allegations contained in the aforementioned documents.

4. The Petitioner will pay \$496.75 in investigative costs in the form of a check or money order made payable to the North Carolina Department of Environmental Quality. The total payment shall be received by the Respondent no later than 30 days after the execution of this Settlement Agreement.

5. The payment agreed to in Paragraph 4 of the Settlement Agreement shall be submitted to the following address:

Sharon Grady
North Carolina Department of Justice
Environmental Division
Post Office Box 629
Raleigh, North Carolina 27602-0629

6. The breach of any condition or compliance deadline contained in Paragraphs 1, 2, and 4 above by the Petitioner will render due and payable immediately, and in full, the original civil penalty that was assessed against the Petitioner.

7. The Petitioner expressly agrees that by entering into this Settlement Agreement, he waives, for purposes of collection of any sums due hereunder, any and all defenses to the underlying assessment of the civil penalty and that the issue in any action to collect said penalty will be limited to the payment or non-payment in the manner prescribed in this Settlement Agreement.

8. Subject to the terms of this Settlement Agreement, DWM agrees to accept the payment described in Paragraph 4 and the timely filing of the Notice of Withdrawal of Contested Case Petition described in paragraph 2 above in full and complete satisfaction of the assessed civil penalty and investigative costs described in Paragraph A.

9. Civil Penalty Assessment UST 15-071P may be considered by the Division as a history of noncompliance pursuant to N.C. Gen. Stat. §143B-282.1 or other applicable statute which considers history of non-compliance.

10. This Settlement Agreement resolves only the current penalties according to the terms and conditions stated herein. Nothing in this Settlement Agreement shall restrict any right of the Division of Waste Management or NCDEQ to take enforcement action against the Petitioner for any new and/or additional violations of environmental statutes or rules, nor shall it restrict the Petitioner's ability to assert any defenses herein mentioned or additional to any new and/or additional violations of environmental statutes or rules.


11. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

12. This Agreement shall be binding upon the parties, their successors and assigns, and is entered into knowingly, intelligently, and voluntarily upon execution by the undersigned,

who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.


13. The agreements, statements, and actions taken herein are made solely for the purpose of settling this matter economically and amicably without litigation and shall not be deemed or construed to be an admission of fault by the Petitioner with respect to any private matter not involving the Division or concession of non-liability by the Division.

Demetrius Smith

By: 
Demetrius Smith

Date: 2/4/16

**NORTH CAROLINA DEPARTMENT
OF ENVIRONMENTAL QUALITY,
DIVISION OF WASTE
MANAGEMENT**

By: 
Ruth A. Strauss, Head
UST Permits and Inspection Branch
Division of Waste Management

Date: 2/9/2016